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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,217	01/12/2004	Judson C. Valeski	NETS0062C	1169

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EXAMINER
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WEST, LEWIS G

ART UNIT	PAPER NUMBER
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2682

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/756,217	<b>Applicant(s)</b> VALESKI, JUDSON C.	
	<b>Examiner</b> Lewis G. West	<b>Art Unit</b> 2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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***Response to Arguments***

Applicant's arguments with respect to claims 42-51 have been considered but are moot in view of the new ground(s) of rejection.

Completely new claims have been provided, and all existing claims cancelled. Therefore this action is made final.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 42-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (US 5,991,737).

Regarding claim 42, Chen discloses a method of operating a portable broadcast receiving and ordering apparatus to order copies of broadcast programs in real time with their broadcast, comprising operations of:

the apparatus receiving user-selected broadcast content and an associated data stream providing substantially real time metadata identifying programming content of the broadcast content; (Col. 5 line 56- col. 6 line 6, RDS)

the apparatus audibly presenting the broadcast content to a user; (Col. 3 lines 28-31)

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the user indicating a desire to order a copy of a song by making predetermined input at the user interface at a first time substantially concurrent with audible presentation of the song, the input being non-specific as to subject matter of the order (Col. 3 lines 21-43);

responsive to detecting the predetermined input, the apparatus utilizing the data stream to identify a song occurring in the broadcast content at a time of the predetermined input, (Col. 5 line 56- col. 6 line 6)

and causing a transmitter to wirelessly send an order to purchase a copy of the identified song from a remote order fulfillment site. (Col. 3 lines 28-31)

Regarding claim 43, Chen discloses a vehicle-mounted frequency modulated (FM) radio receiver apparatus for receiving FM broadcast programs and facilitating real time user-initiated requests to purchase copies of selected ones of the broadcast programs, the apparatus comprising:

a user interface; (item 18, Col. 5 lines 23-41)

at least one receiver to receive signals including at least: a user-selected FM broadcast content signal and an associated radio data system (RDS) signal providing substantially real time metadata identifying programming content of the broadcast signal; (Col. 5 line 56- col. 6 line 6, RDS)

an order transmitter (18);

a controller (26) coupled to the user interface, receiver, and transmitter, the controller programmed to perform operations comprising:

sensing user entry of an order command via the user interface, (Col. 5 lines 38-41)

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the order command being non-specific as to subject matter of the order; (Col. 5 lines 23-41)

responsive to the order command, referencing the RDS signal to identify programming content occurring in the broadcast content signal at a time of the order command, and causing the transmitter to wirelessly send an order to purchase a copy of the identified programming content from a remote order fulfillment facility. (Col. 5 lines 23-Col. 6 lines 6)

Regarding claim 44, Chen discloses a portable broadcast receiver apparatus for receiving broadcast programs and facilitating real time user-initiated requests to purchase copies of selected ones of the broadcast programs, the apparatus comprising:

a user interface; (item 18, Col. 5 lines 23-41)

at least one receiver configured to receive signals including at least: a user-selected broadcast content signal and an associated data signal providing substantially real time metadata identifying programming content of the broadcast signal; (Col. 5 line 56- col. 6 line 6, RDS)

an order transmitter (18);

a controller (26) coupled to the user interface, receiver, and transmitter,

the controller programmed to perform operations comprising:

sensing user entry of an order command via the user interface, the order command being non-specific as to subject matter of the order; (Col. 5 lines 23-41)

in substantial real time with the order command, referencing the data signal to identify programming content presently occurring in the broadcast content signal, and causing the

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transmitter to wirelessly send an order to purchase a copy of the identified programming content from a remote order fulfillment facility. (Col. 5 lines 23-41 see also col. 3 lines 28-31)

Regarding claim 45, Chen discloses the apparatus of claim 45, the data signal comprising a radio data system (RDS) channel. (Col.5 lines 56-60)

Regarding claim 46, Chen discloses the apparatus of claim 45, the receiver comprising a frequency modulated (FM) radio receiver. (Col. 3 lines 28-31)

Regarding claim 47, Chen discloses the apparatus of claim 45, the transmitter comprising at least one of the following: a bidirectional pager (Col. 3 line 25), a wireless telephone (Col. 3 line 28).

Regarding claim 48, Chen discloses the apparatus of claim 45, the user interface comprising at least one of the following: voice activated input device, a biometric input device, tactile interface. As the limitations are claimed in the alternative, only one must be included in the reference to read on the limitations, and at least a tactile interface is disclosed in col. 5 lines 37-41.

Regarding claim 49, Chen discloses the apparatus of claim 45, the user interface comprising at least one of the following: visual output device, audio output device. (Col. 5 lines

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42-col. 6 line 7) As the consumer transmitter and receiver may be combined, the RDS would provide a visual output and the receiver playing the song would be providing the audio output.

Regarding claim 50, Chen discloses a portable broadcast receiver apparatus for receiving broadcast programs and facilitating real time user-initiated requests to purchase copies of selected ones of the broadcast programs, the apparatus comprising:

a user interface; (item 18, Col. 5 lines 23-41)

at least one receiver configured to receive signals including at least: a user-selected broadcast content signal and an associated data signal providing substantially real time metadata identifying programming content of the broadcast signal; (Col. 5 line 56- col. 6 line 6, RDS)

an order transmitter; (Col. 5 lines 23-41)

a controller (26) coupled to the user interface, receiver, and transmitter,

the controller programmed to perform operations comprising:

sensing user entry of an order command via the user interface, the order command being non-specific as to subject matter of the order; (Col. 5 lines 38-41)

referencing the data signal in substantially real time with the order command to correlate the order command with a unit of broadcast content presently occurring in the broadcast content signal; (Col. 3 lines 28-31)

causing the transmitter to wirelessly send an order to purchase a copy of the correlated unit of broadcast content from a remote order fulfillment facility. (Col. 5 lines 38-41 and also col. 3 lines 28-31)

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Regarding claim 51, Chen discloses at least one signal bearing medium tangibly embodying one or more programs of machine-readable instructions executable by a controller to perform operations to operate a portable broadcast receiver apparatus that includes at least one receiver configured to receive signals including at least a user-selected broadcast content signal and an associated data signal providing substantially real time metadata identifying programming content of the broadcast signal (RDS see col. 5 line 56-col. 6 line 6), the operations comprising:

sensing user entry of an order command via a user interface, the order command being non-specific as to subject matter of the order; in substantially real time with the order command, referencing the data signal to identify programming content presently occurring in the broadcast content signal (Col. 3 lines 21-43);

causing an order transmitter to wirelessly send an order to purchase a copy of the identified programming content from a remote order fulfillment facility. (Col. 3 lines 28-31)

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

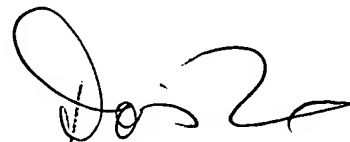
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lewis G. West whose telephone number is 571-272-7859. The examiner can normally be reached on Monday-Friday 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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